

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

AUG 13 2013

SEAN F. McAVOY, CLERK
DEPUTY
RICHLAND, WASHINGTON

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ED AGUILAR,

Plaintiff,

v.

MISSION SUPPORT ALLIANCE, LLC;
HANFORD ATOMIC METAL TRADES
COUNCIL; CARPENTER MILLWRIGHT
LOCAL UNION 2403,

Defendants.

No. CV-11-5123-EFS

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

1 2. "CONFIDENTIAL" MATERIAL

2 "Confidential" material shall include the following documents
3 and tangible things produced or otherwise exchanged:

- 4 • Social security numbers,
- 5 • Medical records,
- 6 • Tax returns,
- 7 • Cell phone numbers and records,
- 8 • Personal email addresses,
- 9 • Membership lists and contact information,
- 10 • Bargaining unit member lists and contact information,
- 11 • Propriety business information, records, and trade secrets,
- 12 • Confidential financial records, and
- 13 • Non-party and third-party personnel records.

14 3. SCOPE

15 The protections conferred by this agreement cover not only
16 confidential material (as defined above), but also (1) any information
17 copied or extracted from confidential material; (2) all copies,
18 excerpts, summaries, or compilations of confidential material; and (3)
19 any testimony, conversations, or presentations by parties or their
20 counsel that might reveal confidential material. However, the
21 protections conferred by this agreement do not cover information that
22 is in the public domain or becomes part of the public domain through
23 trial or otherwise.
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1 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

2 4.1 Basic Principles. A receiving party may use confidential
3 material that is disclosed or produced by another party or by a non-
4 party in connection with this case only for prosecuting, defending, or
5 attempting to settle this litigation. Confidential material may be
6 disclosed only to the categories of persons and under the conditions
7 described in this agreement. Confidential material must be stored and
8 maintained by a receiving party at a location and in a secure manner
9 that ensures that access is limited to the persons authorized under
10 this agreement.

11 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
12 otherwise ordered by the court or permitted in writing by the
13 designating party, a receiving party may disclose any confidential
14 material only to:

15 (a) the receiving party's counsel of record in this action,
16 as well as employees of counsel to whom it is reasonably
17 necessary to disclose the information for this litigation;

18 (b) the officers, directors, and employees (including in
19 house counsel) of the receiving party to whom disclosure is
20 reasonably necessary for this litigation, unless the parties
21 agree that a particular document or material produced is for
22 Attorney's Eyes Only and is so designated;

23 (c) experts and consultants to whom disclosure is
24 reasonably necessary for this litigation and who have signed the
25 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

1 (d) the court, court personnel, and court reporters and
2 their staff;

3 (e) copy or imaging services retained by counsel to assist
4 in the duplication of confidential material, provided that
5 counsel for the party retaining the copy or imaging service
6 instructs the service not to disclose any confidential material
7 to third parties and to immediately return all originals and
8 copies of any confidential material;

9 (f) during their depositions, witnesses in the action to
10 whom disclosure is reasonably necessary and who have signed the
11 "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless
12 otherwise agreed by the designating party or ordered by the
13 court. Pages of transcribed deposition testimony or exhibits to
14 depositions that reveal confidential material must be separately
15 bound by the court reporter and may not be disclosed to anyone
16 except as permitted under this agreement;

17 (g) the author or recipient of a document containing the
18 information or a custodian or other person who otherwise
19 possessed or knew the information.

20 4.3 Filing Confidential Material. Before filing confidential
21 material or discussing or referencing such material in court filings,
22 the filing party shall confer with the designating party to determine
23 whether the designating party will remove the confidential
24 designation, whether the document can be redacted, or whether a motion
25 to seal or stipulation and proposed order is warranted. Eastern
26 District of Washington Administrative Procedures for Electronic Case

1 Filing for Civil Cases Rule II.A.4 sets forth the procedures that must
2 be followed and the standards that will be applied when a party seeks
3 permission from the court to file material under seal.

4 The obligation to meet and confer will be deemed met where the
5 filing party attests that it has made diligent, good-faith efforts to
6 contact the designated party without success and recites those
7 efforts.

8 5. DESIGNATING PROTECTED MATERIAL

9 5.1 Exercise of Restraint and Care in Designating Material for
10 Protection. Each party or non-party that designates information or
11 items for protection under this agreement must take care to limit any
12 such designation to specific material that qualifies under the
13 appropriate standards. The designating party must designate for
14 protection only those parts of material, documents, items, or oral or
15 written communications that qualify, so that other portions of the
16 material, documents, items, or communications for which protection is
17 not warranted are not swept unjustifiably within the ambit of this
18 agreement. Mass, indiscriminate, or routinized designations are
19 prohibited. Designations that are shown to be clearly unjustified or
20 that have been made for an improper purpose (e.g., to unnecessarily
21 encumber or delay the case development process or to impose
22 unnecessary expenses and burdens on other parties) expose the
23 designating party to sanctions.

24 If it comes to a designating party's attention that information
25 or items that it designated for protection do not qualify for
26

1 protection, the designating party must promptly notify all other
2 parties that it is withdrawing the mistaken designation.

3 5.2 Manner and Timing of Designations. Except as otherwise
4 provided in this agreement (see, e.g., second paragraph of section
5 5.2(a) below), or as otherwise stipulated or ordered, disclosure or
6 discovery material that qualifies for protection under this agreement
7 must be clearly so designated before or when the material is disclosed
8 or produced.

9 (a) Information in documentary form: (e.g., paper or
10 electronic documents and deposition exhibits, but excluding
11 transcripts of depositions or other pretrial or trial
12 proceedings), the designating party must affix the word
13 "CONFIDENTIAL" to each page that contains confidential material.
14 If only a portion or portions of the material on a page
15 qualifies for protection, the producing party also must clearly
16 identify the protected portion(s) (e.g., by making appropriate
17 markings in the margins).

18 (b) Testimony given in deposition or in other pretrial or
19 trial proceedings: the parties must identify on the record,
20 during the deposition, hearing, or other proceeding, all
21 protected testimony, without prejudice to their right to so
22 designate other testimony after reviewing the transcript. Any
23 party or non-party may, within fifteen days after receiving a
24 deposition transcript, designate portions of the transcript, or
25 exhibits thereto, as confidential.

1 (c) Other tangible items: the producing party must affix in
2 a prominent place on the exterior of the container or containers
3 in which the information or item is stored the word
4 "CONFIDENTIAL." If only a portion or portions of the information
5 or item warrant protection, the producing party, to the extent
6 practicable, shall identify the protected portion(s).

7 5.3 Inadvertent Failures to Designate. If timely corrected, an
8 inadvertent failure to designate qualified information or items does
9 not, standing alone, waive the designating party's right to secure
10 protection under this agreement for such material. Upon timely
11 correction of a designation, the receiving party must make reasonable
12 efforts to ensure that the material is treated in accordance with the
13 provisions of this agreement.

14 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

15 6.1 Timing of Challenges. Any party or non-party may challenge a
16 designation of confidentiality at any time. Unless a prompt challenge
17 to a designating party's confidentiality designation is necessary to
18 avoid foreseeable, substantial unfairness, unnecessary economic
19 burdens, or a significant disruption or delay of the litigation, a
20 party does not waive its right to challenge a confidentiality
21 designation by electing not to mount a challenge promptly after the
22 original designation is disclosed.

23 6.2 Meet and Confer. The parties must make every attempt to
24 resolve any dispute regarding confidential designations without court
25 involvement. Any motion regarding confidential designations or for a
26 protective order must include a certification, in the motion or in a

1 declaration or affidavit, that the movant has engaged in a good faith
2 meet and confer conference with other affected parties in an effort to
3 resolve the dispute without court action. The certification must list
4 the date, manner, and participants to the conference. A good faith
5 effort to confer requires a face-to-face meeting or a telephone
6 conference.

7 6.3 Judicial Intervention. If the parties cannot resolve a
8 challenge without court intervention, the designating party may file
9 and serve a motion to retain confidentiality. The burden of
10 persuasion in any such motion shall be on the designating party.
11 Frivolous challenges, and those made for an improper purpose (e.g., to
12 harass or impose unnecessary expenses and burdens on other parties)
13 may expose the challenging party to sanctions. All parties shall
14 continue to maintain the material in question as confidential until
15 the court rules on the challenge.

16 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
17 LITIGATION

18 If a party is served with a subpoena or a court order issued in
19 other litigation that compels disclosure of any information or items
20 designated in this action as "CONFIDENTIAL," that party must:

21 (a) promptly notify the designating party in writing and include
22 a copy of the subpoena or court order;

23 (b) promptly notify in writing the party who caused the subpoena
24 or order to issue in the other litigation that some or all of the
25 material covered by the subpoena or order is subject to this

1 agreement. Such notification shall include a copy of this agreement;
2 and

3 (c) cooperate with respect to all reasonable procedures sought
4 to be pursued by the designating party whose confidential material may
5 be affected.

6 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

7 If a receiving party learns that, by inadvertence or otherwise,
8 it has disclosed confidential material to any person or in any
9 circumstance not authorized under this agreement, the receiving party
10 must immediately (a) notify in writing the designating party of the
11 unauthorized disclosures, (b) use its best efforts to retrieve all
12 unauthorized copies of the protected material, (c) inform the person
13 or persons to whom unauthorized disclosures were made of all the terms
14 of this agreement, and (d) request that such person or persons execute
15 the "Acknowledgment and Agreement to Be Bound" that is attached hereto
16 as Exhibit A.

17 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
18 MATERIAL

19 When a producing party gives notice to receiving parties that
20 certain inadvertently produced material is subject to a claim of
21 privilege or other protection, the obligations of the receiving
22 parties are those set forth in Federal Rule of Civil Procedure
23 26(b)(5)(B). This provision is not intended to modify whatever
24 procedure may be established in an e-discovery order or agreement that
25 provides for production without prior privilege review. Parties shall
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1 confer on an appropriate non-waiver order under Federal Rule of
2 Evidence 502.

3 10. NON TERMINATION AND RETURN OF DOCUMENTS

4 Within 60 days after the termination of this action, including
5 all appeals, each receiving party must return all confidential
6 material to the producing party, including all copies, extracts and
7 summaries thereof. Alternatively, the parties may agree upon
8 appropriate methods of destruction.

9 Notwithstanding this provision, counsel are entitled to retain
10 one archival copy of all documents filed with the court, trial,
11 deposition, and hearing transcripts, correspondence, deposition and
12 trial exhibits, expert reports, attorney work product, and consultant
13 and expert work product, even if such materials contain confidential
14 material. The confidentiality obligations imposed by this agreement
15 shall remain in effect until a designating party agrees otherwise in
16 writing or a court orders otherwise.

17 It is so stipulated, through counsel of record,

18 DATED: 8/13/13 Claguta Plaintiff

19 DATED: 8/13/13 CS counsel for Defendant

20 Mission Support Alliance LLC

21 DATED: Michael R. G. 8/13/13 counsel for Defendant

22 Carpenter Millwright Local 2403, Hanford Atomic Metal Trades Council

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1 PURSUANT TO STIPULATION, IT IS HEREBY ORDERED: Plaintiff's
2 Motion for Protective Order, ECF No. 91, is GRANTED as set forth
3 above.

4 IT IS SO ORDERED. The Clerk's Office is directed to enter this
5 Order and provide copies to Mr. Aguilar and counsel.

6 DATED this 13th day of August 2013.

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8 EDWARD F. SHEA

9 Senior United States District Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty
of perjury that I have read in its entirety and understand the
Stipulated Protective Order that was issued by the United States
District Court for the Eastern District of Washington on August 13,
2013 in the case of Aguilar v. Mission Support Alliance, et al, CV-11-
5123-EFS. I agree to comply with and to be bound by all the terms of
this Stipulated Protective Order and I understand and acknowledge that
failure to so comply could expose me to sanctions and punishment in
the nature of contempt. I solemnly promise that I will not disclose in
any manner any information or item that is subject to this Stipulated
Protective Order to any person or entity except in strict compliance
with the provisions of this Order.

I further agree to submit to the jurisdiction of the United
States District Court for the Eastern District of Washington for the
purpose of enforcing the terms of this Stipulated Protective Order,
even if such enforcement proceedings occur after termination of this
action.

Date: _____

City and State where sworn and signed:

Printed name: _____

Signature: _____